

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ANTHONY D. MAZAITIS,

Plaintiff/Counter Defendant-  
Appellant

v

BETHANNE W. NOEL, Personal Representative  
of the ESTATE OF ROBERT A. ROSZA and the  
ROBERT A. ROSZA LIVING TRUST,

Defendant/Counter Plaintiff/Cross  
Plaintiff-Appellee,

and

TRANSAMERICA OCCIDENTAL LIFE  
INSURANCE COMPANY, TRANSAMERICA  
ANNUITY SERVICE CORP., and AEGON  
STRUCTURED SETTLEMENTS,

Defendants/Cross Defendants-  
Appellees.

UNPUBLISHED

October 11, 2005

No. 253959

Wayne Circuit Court

LC No. 03-311577-CK

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Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals from the trial court order that granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(8) and 2.116(C)(10). We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Proceedings

Defendant is the daughter and sole heir of Robert A. Rosza, who died February 1, 2003. Since 1988, Rosza received monthly and other periodic payments from an annuity created pursuant to a Structured Settlement Agreement (“Agreement”), which settled an accident-related tort claim. The Agreement provided that Rosza could name a death beneficiary who would take the annuity proceeds in the event Rosza died before all payments under the terms of the Agreement were made. The Agreement read in part:

Any Payments to be made after the death of the Plaintiff [Rosza] pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in the annuity application. If no person or entity is so designated in the annuity application, such payments shall be made to the estate of the plaintiff. *No designation change shall be effective unless it is in writing and delivered to the International Insurance Company or its designee.*

In 1997, Rosza named plaintiff as death beneficiary to the annuity. In 1998, Rosza named plaintiff as primary beneficiary and defendant as contingent beneficiary under the appropriate form, dated January 6, 1998.

On January 16, 2003, two weeks before his death and after a seven-month battle with cancer, Rosza executed a document, which read:

To Whom It May Concern:

I, Robert A. Rosza, would like all of my financial account captions to read:

Robert A. Rosza Living Trust Dated August 24, 2000

All account numbers and checks should remain the same.

Defendant says that this document constitutes a change of beneficiary for the aforementioned annuity. Yet, though the document was notarized, it was not delivered to the International Insurance Company or its designee. And, Mr. Rosza executed a change of beneficiary form on several occasions and ensured that the form was delivered to the insurance company, as required by the Agreement. Moreover, the document did not use the form Mr. Rosza previously used to change the beneficiary of the annuity.

Plaintiff received two annuity payments totaling \$6,000 before payment ceased in light of possible claims being made against it. Plaintiff sued for a declaratory judgment.<sup>1</sup> Defendant counter-claimed and asked for summary disposition pursuant to MCR 2.116(C)(8) and 2.116(C)(10).

## II. Standard of Review

We review de novo a trial court's decision on a motion for summary disposition. *Taxpayers of Michigan Against Casinos v State*, 471 Mich 306, 317; 685 NW2d 221 (2004). A motion for summary disposition based on the lack of a material factual dispute tests the factual sufficiency of the complaint. A court must consider the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. If the proffered evidence fails to establish a genuine issue of any material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999). A motion for summary disposition based on the failure to state a claim tests the legal sufficiency of the complaint. All well-pleaded factual allegations are

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<sup>1</sup> Transamerica Occidental Life Insurance Company, Transamerica Annuity Service Corp. and Aegon Structured Settlements were also named as defendants.

accepted as true and construed in the light most favorable to the non-moving party. Considering only the pleadings, the motion should be granted if the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.*, 119.

### III. Analysis

The trial court found, incorrectly, that the deathbed document evinced Rosza's intent to change the beneficiary of the annuity. In *Aetna Life Ins Co v Brooks*, 96 Mich App 310; 292 NW2d 532 (1980), this Court stated:

It is well settled in Michigan that substantial compliance with change-of-beneficiary requirements is sufficient to effect a substitution. When an insured has done all he can to change a beneficiary, the original beneficiary loses all rights under the policy. [*Id.* at 315-316 (citations omitted).]

Here, it does not appear that Mr. Rosza substantially complied with the change of beneficiary requirements contained in the Agreement. Moreover, it also does not appear that Mr. Rosza did all that he could do to execute an appropriate change of beneficiary form. Had, there appears to be genuine issues of fact that need to be developed at the trial court before a decision can be made concerning the efficacy of this alleged change of beneficiary.

We reverse the trial court's grant of summary disposition for several reasons. First, and most importantly, the document that defendant and the trial court rely on to conclude that a change of beneficiary was made is, at best, vague and ambiguous. The document makes no reference to any annuity or to the annuity in issue and says nothing about a change in beneficiary for any document or the specific annuity in question. Second, Mr. Rosza changed beneficiaries, on at least two occasions, and did so properly by executing the appropriate documents and providing them to the insurance company. Clearly then, he was fully familiar with the appropriate language, form and procedure to make a beneficiary change for the annuity. And, as the record reflects, Mr. Rosza did not use the language, the form or the procedure in this case. Third, the document relied on by defendant simply says that Mr. Rosza would "like" financial account *captions* to read a designated way. On its face, this language does not effectuate a change in beneficiary. Instead, it is possible, but certainly not necessary, to interpret this language as an attempt to transfer ownership of the annuity. Yet, Mr. Rosza did not have title to the annuity. *Allstate Ins Co v American Bankers Ins Co of Florida*, 882 F2d 856 (CA 4, 1989). Finally, though Mr. Rosza clearly had the right to change the beneficiary of the annuity, the trial court surmised and speculated about Mr. Rosza's intent from the aforementioned ambiguous document. This evidence is insufficient to determine rights under the annuity. This is particularly true, where, as here, the ambiguous document was allegedly executed by Mr. Rosza on his deathbed, in the hospital, in the presence of defendant.<sup>2</sup>

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<sup>2</sup> The record suggests that defendant was present with Rosza in his hospital room when he made the deathbed document, which may raise a presumption of undue influence. A presumption of undue influence arises when evidence shows (1) the existence of a confidential or fiduciary  
(continued...)

In light of the foregoing, summary disposition was prematurely and improperly granted and we remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Jane E. Markey

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(...continued)

relationship between the grantor and a fiduciary; (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction; and (3) a fiduciary had an opportunity to influence the grantor's decision in that transaction. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).